

SENATE BILL 1659  
By Atchley

AN ACT to amend Tennessee Code Annotated Title 56, Chapter 32, Section 212, to revise and clarify the financial risk reserves, including but not limited to minimum net worth and custodial deposits, required to be maintained by health maintenance organizations operating in the State of Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-32-212, is amended by deleting this section in its entirety and replacing this section with the following language:

(a) To ensure the public's interest in the delivery of health care services by fiscally sound health maintenance organizations, each such organization must provide the commissioner evidence of compliance with the following minimum net worth requirements:

(1) Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization have an initial net worth of one million five hundred thousand dollars (\$1,500,000), and thereafter health maintenance organizations must maintain the minimum net worth as set forth herein. The term "net worth" means the excess of total admitted assets over total admitted liabilities, but the liabilities shall not include fully subordinated debt approved by the commissioner.

(2) Except as provided in paragraphs (3) and (4) of this subsection, every health maintenance organization must maintain a minimum net worth equal to the greater of:

(A) One million five hundred thousand dollars (\$1,500,000); or

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(B) An amount totaling four percent (4%) of the first \$150,000,000 of annual premium revenue as reported on the most recent annual statement filed with the commissioner and one and one-half percent (1.5%) of the annual premium revenue in excess of \$150,000,000. The term "premium revenue" or "premiums" as used in Title 56 shall include, but not be limited to, any and all payments made by the State of Tennessee to any entity providing health care services pursuant to any federal waiver received by the State of Tennessee that waives any or all of the provisions of title XIX of the Federal Social Security Act, and regulations promulgated pursuant thereto, or pursuant to any other federal law as adopted by amendment to the required title XIX State plan.

(3) A health maintenance organization licensed before March 1, 1997 must maintain a minimum net worth of:

(A) Fifty percent (50%) of the amount required by § 56-32-212(a)(2) from the effective date of T.C.A. § 56-32-212 as most recently amended to December 31, 1997;

(B) Seventy-five percent (75%) of the amount required by § 56-32-212(a)(2) from January 1, 1998 to June 30, 1998; and

(C) One hundred percent (100%) of the amount required by § 56-32-212(a)(2) after June 30, 1998.

(4) In determining net worth, no debt shall be considered fully subordinated unless in a form approved by the commissioner. Any interest obligation relating to the repayment of any subordinated debt must be similarly subordinated. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

(5) For purposes of calculating a health maintenance organization's net worth the term "admitted assets" includes the following, as may be subsequently modified by the commissioner:

(A) Petty cash and other cash funds in the organization's principal or official branch office that are under the organization's control;

(B) Immediately withdrawable funds on deposit in demand accounts, in a bank or trust company organized and regularly examined under the laws of the United States or any state, and insured by an agency of the United States government, or like funds actually in the principal or official branch office at statement date and in transit to a bank or trust company with authentic deposit credit given before the close of business on the fifth bank working day following the statement date;

(C) The amount fairly estimated as recoverable on cash deposited in a closed bank or trust company, if the assets qualified under this section before the suspension of the bank or trust company;

(D) Receivables due from persons that are not more than ninety (90) days past due;

(E) Amounts due under reinsurance arrangements from insurance companies authorized to do business in this state;

(F) Undisputed tax refunds or other receivables due from the United States or this state;

(G) Amounts on deposit under § 56-32-212(b); and

(H) Investments determined as allowable by the commissioner under § 56-32-211.

(6) A health maintenance organization must maintain a positive working capital.

Working capital means current assets minus current liabilities.

(7) If the working capital or net worth is less than the required minimum, the HMO must submit for approval by the commissioner a written plan within thirty (30) days after the commissioner has given the health maintenance organization notice of the net worth or working capital deficiency. The commissioner may take action against the health maintenance organization under § 56-32-216 or § 56-32-217 if:

(A) A health maintenance organization does not propose a plan to correct its working capital or net worth deficiency within the time frame described above;

(B) A health maintenance organization violates a plan that has been approved;

(C) The commissioner determines that an improper working capital or net worth status cannot be corrected within a reasonable time; or

(D) The commissioner determines that an organization is in such financial condition that the transaction of further business would be hazardous to its enrollees, its creditors, or the public.

(b) To ensure that a health maintenance organization provides for contract and medical services in the case of insolvency or liquidation, each health maintenance organization must maintain deposits in custodial or controlled accounts as described herein.

(1) Before issuing any certificate of authority, the commissioner shall require each health maintenance organization to deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to him through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than nine hundred thousand dollars (\$900,000).

(2) A health maintenance organization that is in operation on June 1, 1997, shall maintain a deposit equal to nine hundred thousand dollars (\$900,000), in the manner set forth in subsection (1) above. Each such organization shall provide evidence of such deposit to the commissioner within ninety (90) days after June 1, 1997.

(3) In addition to the above deposit requirements, a health maintenance organization shall also maintain on deposit in the manner set forth in subsection (1) above one hundred thousand dollars (\$100,000) for each ten million dollars (\$10,000,000) or fraction thereof of annual premium revenue in excess of twenty million dollars (\$20,000,000) and less than one hundred million dollars (\$100,000,000) as reported on the most recent annual financial statement filed with the commissioner, and fifty thousand dollars (\$50,000) for each ten million dollars (\$10,000,000) or fraction thereof of annual premium revenue in excess of one hundred million dollars (\$100,000,000) as reported on the most recent annual financial statement filed

with the commissioner. Any health maintenance organization that is in operation on June 1, 1997, shall provide evidence of such deposit to the commissioner within one hundred sixty (160) days after June 1, 1997.

(4) In any year in which the accumulated deposit of a health maintenance organization is more than the amount required to be maintained by such organization under the terms of this section, at the organization's request the commissioner shall reduce the previously accumulated deposit by the amount that the deposit exceeds the amount of deposit required by this section.

(5) The deposit shall be an admitted asset of the health maintenance organization in the determination of net worth.

(6) All income from deposits shall be an asset of the organization. A health maintenance organization that has been allowed by the commissioner to make a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value as approved by the commissioner. No substitute deposit shall be allowed unless approved in advance by the commissioner.

(7) The deposit shall be used and shall be considered held in trust to protect the interests of the health maintenance organization's enrollees and to assure continuation of health care services to enrollees of a health maintenance organization that is in rehabilitation or liquidation. If the health maintenance organization is placed voluntarily or involuntarily in rehabilitation or liquidation, the deposit shall immediately prior to the filing of the rehabilitation or liquidation proceeding vest in the State of Tennessee.

(c) Every health maintenance organization shall, when determining liabilities for purposes of calculating the organization's net worth, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or

settlement of such claims. Such liabilities may be computed in accordance with rules and regulations promulgated by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization.

SECTION 2. If any provision of this act, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.